



Shelby County Government

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January 2, 2019

Honorable Floyd Bonner, Jr.
Shelby County Sheriff
201 Poplar Avenue, Suite 902
Memphis, TN 38103

SHELBY COUNTY ATTORNEY OPINION

RE: Shelby County Sheriff's Office Obligations under Tenn. Code Ann. §§ 4-42-101 *et seq.* (formerly cited as Tenn. Code Ann. §§ 4-59-101 *et seq.*).

Dear Sheriff Bonner:

This opinion is written in response to the following question:

ISSUE

Is the Shelby County Sheriff's Office required to comply with Tenn. Code Ann. §§ 4-42-101 *et seq.* (formerly cited as §§ 4-59-101 *et seq.*), effective January 1, 2019?

OPINION

No. Tenn. Code Ann. §§ 4-42-101 *et seq.* does not apply to Shelby County. Further, the statute is unenforceable against Shelby County due to vagueness.

ANALYSIS

Shelby County and the municipalities that are a part of the County do not have a "sanctuary policy" as defined in Tenn. Code Ann. §§ 4-42-101 *et seq.* In short, Shelby County is not a "sanctuary city." Moreover, the statute's prohibition applies only to "state governmental entit[ies] or officials." *See* Tenn. Code Ann. § 4-42-102(4) (defining "state governmental entity") and Tenn. Code Ann. § 4-42-103 (prohibiting certain acts taken by a "state governmental entity or official"). Neither

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Shelby County, the Sheriff, nor the Sheriff's Office qualifies as a state governmental entity or official.

Sanctuary policies do not exist in Shelby County. All policies adopted by Shelby County abide by the United States Constitution and the Constitution of the State of Tennessee. Though not authoritative, Governor Haslam's decision not to sign the bill, including his explanations for why, are illuminating on this point:

[This legislation] is a solution looking for a problem . . . [which] has primarily served to stir up fear on both sides of the issue, which distracts from focusing on real problems as well as the opportunities in front of us. Sanctuary cities are already prohibited by state law and do not exist in Tennessee. In its final form, the bill prohibits the State and local governments from adopting ordinances, policies, or practices that subvert enforcement of federal law, and it permits—but does not require—local law enforcement to enter into agreements with federal agencies regarding cooperation. Tennessee law is already strong in this area. We prohibit ordinances and written policies that restrict local officials from complying with federal immigration laws, require employer verification of immigration status, encourage communication with federal agencies, and prohibit providing public benefits to those unlawfully in the United States. For these reasons and others, House Bill2315 will become law without my signature.

(Gov. Bill Haslam, Letter of May 21, 2018, to the Honorable Beth Harwell, Speaker of the House, Tennessee State Legislature).

The statute is nevertheless unenforceable against Shelby County because the purported prohibitions in it are so ambiguous that it renders the law void for vagueness. The language in the statute is unclear to the extent that it can be interpreted as requiring absurd and/or potentially unconstitutional conduct by any law enforcement agency. *See United States v. Williams*, 553 U.S. 285, 304 (2008) (a statute is void for vagueness if it is so standardless that it authorizes arbitrary and discriminatory enforcement or if it fails to give people of ordinary intelligence fair notice of prohibited conduct). When read literally, the statute appears to require some actor to detain individuals indefinitely without a warrant or probable cause to do so based on nothing more than a request of some kind from the department of homeland security or a successor agency.

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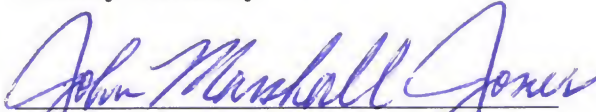
For the reasons outlined above, it is the opinion of this Office that the requirements of Tenn. Code Ann. §§ 4-42-101, *et seq.* do not apply to Shelby County or the Shelby County Sheriff's Office.

If this Office may be of additional assistance to you, please do not hesitate to contact us.

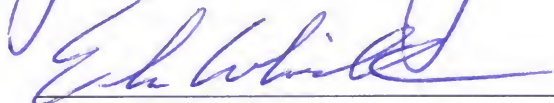
Sincerely,



Marlinee C. Iverson
County Attorney



John M. Jones
Deputy County Attorney



E. Lee Whitwell
Assistant County Attorney